



# Department of Justice

FOR IMMEDIATE RELEASE  
MONDAY, NOVEMBER 28, 2005  
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## **DOJ AND FTC TO HOLD JOINT PUBLIC HEARINGS ON COMPETITION POLICY RELATED TO SINGLE-FIRM CONDUCT**

### *Hearings to Begin in Spring 2006*

WASHINGTON, D.C. – The Department of Justice’s Antitrust Division, together with the Federal Trade Commission (FTC), has announced that it will hold a series of public hearings designed to examine the antitrust implications of single firm conduct under the antitrust laws. The primary goal of the hearings, which will begin in spring 2006, is to examine whether and when specific types of single-firm conduct are pro-competitive or benign, and when they may harm consumers.

“I hope these hearings can identify a number of areas of consensus with respect to the proper treatment of single-firm conduct,” said Acting Assistant Attorney General for the Antitrust Division Thomas O. Barnett. “I also hope these hearings can advance our state of knowledge regarding the proper treatment of such conduct even in those areas in which there is not yet a consensus. Having clear standards helps businesses comply with the antitrust laws and works to the advantage of consumers.”

“The stakes for consumers and our economy on this issue are high,” said FTC Chairman Deborah Platt Majoras. “Over-enforcement of the monopolization laws leads to high false positives that chills pro-competitive behavior that benefits consumers. Under-enforcement, however, may result in false negatives in which firms continue to engage in exclusionary conduct that harms consumers.”

According to Acting Assistant Attorney General Barnett and Chairman Majoras, the federal antitrust agencies have long recognized the public interest in advancing knowledge of challenging legal issues. Section 2 of the Sherman Antitrust Act, which proscribes exclusionary or predatory monopoly conduct, presents some of the most complex issues facing the Department, the FTC, the courts, the antitrust bar, and the business community. The hearings will examine and analyze a wide-range of legal and economic issues to help define the boundaries between single-firm conduct that is legal and conduct that is illegal under current antitrust laws.

Participants will critically examine and discuss the standards used in recent cases, including DOJ's enforcement actions against Microsoft, American Airlines, and Dentsply, and FTC cases against Intel, Unocal, and Rambus. Private actions, such as those in *Trinko* and *LePage's*, also will be examined. Hearing participants also will examine what economic learning contributes to the analysis with respect to exclusionary or predatory conduct.

The debate about the appropriate legal framework used to evaluate exclusionary conduct has an international component as well. In an increasingly globalized economy, in which transactions can have an impact on multiple jurisdictions, it is imperative that U.S. businesses understand the appropriate line between procompetitive and anticompetitive single-firm conduct and that U.S. antitrust enforcers are able to discuss and share with their foreign counterparts the latest legal and economic scholarship relating to these issues.

The DOJ and FTC recently have conducted a number of joint hearings designed to inform policy- and decision-makers on vital issues affecting consumers and the economy, including joint hearings on antitrust and health care, on competition policy in the real estate industry, and on the interface between antitrust and intellectual property. These hearings on the antitrust implications of single-firm conduct will continue these efforts.

In an upcoming Federal Register notice, the agencies will solicit public comment on the specific types of single-firm conduct that may raise antitrust concerns in a variety of regulated and unregulated industries. These comments will assist the agencies in developing the agenda and schedule for the hearings. The agencies anticipate participation from the business community, economists, lawyers, and other interested parties on this important topic.

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